



Montana
Office of Public Instruction
Denise Juneau, State Superintendent

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DATE: October 20, 2010

TO: School Food Authority Administrators

FROM: Christine Emerson, Director
School Nutrition Programs

RE: National School Lunch Program Appeal Procedures

This memorandum establishes an appeal procedure for a school food authority (SFA) participating in the National School Lunch Program (NSLP) administered by the Office of Public Instruction, Division of Health Enhancement and Safety, School Nutrition Programs. The process for the SFA to appeal a denial of all or a part of a Claim for Reimbursement or the withholding of payments arising from administrative or follow-up review activity conducted by the Office of Public Instruction (OPI) is outlined below. The procedure is established to meet the requirements of 7 CFR Section 210.18(q).

The Office of Public Instruction will not hear appeals of denials of all or a part of a Claim for Reimbursement or the withholding of payments arising from administrative or follow-up review activity conducted by the United States Department of Agriculture, Food and Consumer Service (USDA/FNS). Appeals of these actions must be reported directly to USDA/FNS.

The Office of Public Instruction will follow the NSLP appeal procedure outlined in 7 CFR Section 210.18(q). The basic steps in this procedure are as follows:

1. Notice of Adverse Action: The SFA shall be notified, in writing and sent by certified mail, of the denial of all or part of a Claim for Reimbursement or the withholding of payments and the right to appeal.
2. Request for Review: The SFA may file a written request for review of the record no later than 15 calendar days from the date the SFA received the notice of adverse action. If a hearing is desired, it must be specified in this letter.
3. Appointment of Review Official: An impartial review official shall be appointed by the Assistant Superintendent for Curriculum Services, OPI.
4. Acknowledgement of Request for Review: The review official shall send a notice to the SFA acknowledging the request within 10 calendar days of receipt of the review request. The SFA will be advised of the option of either a hearing or a review of records in the letter of acknowledgement from the review official.

5. Submission of Written Documentation by SFA: The SFA shall submit written documentation to the review official no later than 30 calendar days after the SFA receives the notice of adverse action. The SFA may request either a hearing and/or review of records.
6. Submission of Written Documentation by OPI: The Administrator, Division of Health Enhancement and Safety, and Director, School Nutrition Programs, shall submit documentation to the review official outlining the basis for action taken.
7. Determination by Review Official: If no hearing is requested, the review shall be completed within 60 calendar days from the date OPI received the request for review. If a hearing is requested, the SFA shall be provided at least 10 calendar days advance written notice of the time, date, and place of hearing by certified mail. The hearing shall be conducted within 60 days of the state agency's receipt of the request for review.
8. Notice of Determination: The review official shall make a determination of the validity of the appeal based on the review of written documentation submitted by the SFA and/or the hearing conducted by the review official. The review official shall notify the SFA and the Administrator, Division of Health Enhancement and Safety, and Director, School Nutrition Programs of his/her determination within 60 calendar days of the request for review.

The Assistant Superintendent for Curriculum Services shall appoint a review official for the appeal at the time the written request for appeal is received from the SFA. The review official will be selected from the OPI management personnel who meet the requirements for impartiality and independence outlined in Section 210.18(q) (5). Upon appointment to hear an appeal, the review official will be provided a copy of the NSLP appeal procedure and be briefed on the procedure by the Administrator, Division of Health Enhancement and Safety, and Director, School Nutrition Programs.

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Office of Public Instruction
Division of Health Enhancement and Safety
School Nutrition Programs
National School Lunch Program Appeal Procedures

1. Notice of Adverse Action: Statement included on letter notifying SFA of action. Sent by certified mail, return receipt requested.
2. Request for Review: Filed by SFA no later than 15 calendar days from date the SFA received the notice of adverse action. If a hearing is desired, it must be specified in this letter.
3. Appointment of Review Official: Memorandum from assistant Superintendent of Curriculum Services, OPI, to individual selected. Issued upon receipt of request for review.
4. Acknowledgement of Request for Review: From review official to SFA. Mailed within 10 calendar days of receipt of request for review.

Two Formats:

- Hearing requested.
 - No hearing requested. (review of records)
5. Submission of Written Documentation by SFA: Advised of option in letter of acknowledgement. Filed with review official no later than 30 calendar days after SFA received notice of adverse action.
 6. Determination by Review Official:
 - A. Review of Records:
 - No hearing requested.
 - Complete review when documentation is received, within 60 calendar days from the date OPI received the request for review.
 - B. Hearing:
 - Provided when specifically requested by SFA in request for review. SFA provided at least 10 calendar days advance written notice of time, date, and place of hearing by certified mail (Administrator, Division of Health Enhancement and Safety, and Director, School Nutrition Programs, also notified).
 - Conducted within 60 calendar days from state agency's receipt of request for review
 7. Notice of Determination: SFA, Administrator, Division of Health Enhancement and Safety, and Director, School Nutrition Programs, notified of review official's determination within 60 calendar days of OPI's receipt of request for review.

8. Notice of Right to Appeal: The state agency shall provide the SFA a written notice which details the grounds on which denial of all or part of the Claim for Reimbursement or withholding of payment is based. This notice, sent by certified mail, will also include a statement indicating that the SFA may appeal the denial of all or part of the Claim for Reimbursement or the withholding of payment and the name and address to whom to direct the appeal. The SFA will be given the option of a review of the records and/or a hearing.

The following statement will be issued to notify the SFA:

"You have the right to appeal the overpayment and/or withholding of program payments. If you wish to appeal, you must submit a request for a review of the findings resulting in the over-claim and/or withholding of program payments. Your written request must be submitted to this office no later than fifteen (15) calendar days from the date you receive this notification. If you also desire a hearing before a review official, you must indicate same in your initial request for review."

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